200 FINANCIAL LIABILITIES OF BOARD MEMBERS

200 OVERVIEW

Statutes that authorize the formation of corporations, whether nonprofit or for-profit, assume that directors can be expected to act in the organization's best interests rather than to seek their own personal advantage or gain. Fair Board (Board) members are generally responsible as individuals for exercising their corporate powers with the same skill and care, as an ordinarily prudent person would in his or her own business. It is important to recognize, however, that failure to act prudently may expose directors to personal financial liability.

201 BOARD RESPONSIBILITY FOR FINANCIAL TRANSACTIONS

DAA boards of directors, in conducting the business of fairs, must approve an annual fair budget that conforms to all applicable rules. Furthermore, scheduled expenditures in an approved budget may require additional approvals from CDFA, the Department of Finance and/or the Department of General Services, depending on the circumstances.

201.1 Personal Financial Liability

The annual Budget Act contains a provision that state officers or employees are forbidden from making expenditures without prior authorization. This prohibition applies regardless of whether the transaction in question is a purchase, a contract, or any form of compensation for the Chief Executive Officer (CEO). Further, state law provides that any officer or employee who makes or authorizes expenditures without advance written approval of the Department of Finance, or its official designee, is personally liable for the amount of unlawful indebtedness.

Fairs other than DAAs Similar limitations apply to expenditure of funds by county and citrus fruit fairs.

201.2 Liability Insurance

The California Fair Services Authority (CFSA) provides errors and omissions coverage under its limited liability risk sharing program to directors, officers, and employees of participating fairs, which includes all 54 District Agricultural Associations, the citrus fruit fairs, and 23 county fairs. Similar insurance is also available through private vendors. CFSA's program pays the costs of defending a suit and damages awarded when a director, officer, or employee is found liable for errors or omissions while acting within the scope of his or her duties. Covered errors or omissions may include:

- Actual or alleged error
- Misstatement
- Neglect or breach of duty

201.3 Consequences of Violations of Law and Policy

No liability program covers malfeasance, dishonesty, fraud, willful violations of the law, and violations of state policy. Board members should be aware that if they actively participate in or direct the CEO or staff to take actions that are prohibited by federal, state, or local laws, they may be subjecting the fair *and themselves* to liability. If directors consciously or by indifference seek to avoid knowledge of unlawful activity where they have authority to prevent the unlawful activity, they may potentially be held liable for the consequences.

201.4 Statutory Immunity

Statutory immunity from liability (including for injury resulting from exercise of discretion) is extended to employees and officers of public agencies, including District Agricultural Associations and county fairs run directly by counties. In these institutional settings, the public agency may be responsible for paying an employee's, or officer's, costs of defending a suit and any damages awarded against that employee or officer.

County fairs operated by nonprofit corporations are not extended statutory immunity intended for public agencies. However, the directors of nonprofit public benefit corporations operating fairs may claim protection under a different statute which provides that a nonprofit director is not liable for any Board-approved action taken, or omission made, in good faith and based upon reasonable inquiry.

202 PURCHASING AND CONTRACTING

The Board's governance responsibilities include ensuring that the fair makes good business decisions with respect to purchasing and contracting following state/county requirements. Board policies should include specified dollar thresholds for purchases and contracts the CEO may make without prior board approval.

202.1 Personal Liability for Unauthorized Expenditures by Directors

Board members are not authorized to make purchases on behalf of the fair or to direct staff to make purchases without prior approval of the CEO. Individual Board members responsible for making unauthorized purchases, or directing staff to make them may be exposing themselves to liability for these costs from their personal resources.

203 RISK MANAGEMENT

The Board is responsible for protecting the financial interests of the fair, including limiting the fair's exposure to liability.

203.1 Risk Management Policy and Program

The Board is responsible for adopting a risk management policy and conveying that policy to the CEO. The CEO is responsible for development of a written safety plan and strategy which includes establishing an active program of periodic staff training in safety and risk reduction. Everyone associated with the fair, from the CEO to the occasional volunteer, shall be informed and educated regarding the safety plan and risk reduction. A volunteer may be thought to cost nothing until an accident or other incident exposes the fair to financial loss.

203.2 Insurance Fees Modified on the Basis of Loss Experience

An effective loss prevention program can save the fair money when insurance fees are adjusted annually. For example, in the risk pools managed by the California Fair Services Authority (CFSA), fees for both workers compensation and general liability are adjusted annually to provide a credit for those fairs with sound loss prevention programs and lower losses than other fairs of comparable size. Conversely, CFSA assesses additional fees from fairs which have not implemented loss prevention programs and which have incurred higher losses than other fairs of comparable size.